

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

SMART INSURANCE COMPANY,

Plaintiff,

v.

BENECARD SERVICES, INC.,

Defendant.

Case No. 1:15-cv-04384-KBF

**DECLARATION OF B. JOHN  
PENDLETON, JR. IN SUPPORT OF  
DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S DAUBERT MOTION TO  
EXCLUDE PORTIONS OF THE  
TESTIMONY AND REPORT OF JASON  
RUCHABER, CFA, ASA**

**B. JOHN PENDLETON, JR.**, under penalty of perjury, hereby declares as follows:

I am an attorney-at-law admitted in the United States District Court for the Southern District of New York and a member of the law firm of DLA Piper LLP (US). I am familiar with the facts and circumstances stated herein and respectfully submit this declaration in support of defendant Benecard Services, Inc.'s opposition to plaintiff's Daubert motion to exclude portions of the testimony and report of Jason Ruchaber, CPA, ASA.

1. Attached hereto as Exhibit 1 is true and correct copy of referenced portions of the deposition of John Leary, dated July 7, 2016.
2. Attached hereto as Exhibit 2 is true and correct copy of referenced portions of the deposition of Jason Ruchaber, dated July 8, 2016.
3. Attached hereto as Exhibit 3 is true and correct copy of Smart Insurance Company's Investment Committee Update Memo, dated November 2, 2012.

4. Attached hereto as Exhibit 4 is a true and correct copy of referenced portions of 2013 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds.

5. Attached hereto as Exhibit 5 is a true and correct copy of an email from John Gardynik, dated July 27, 2013.

I hereby declare that the foregoing statements made by me are true. I am aware that if any of the foregoing is willfully false, I may be subject to punishment.

**DLA PIPER LLP (US)**

s/ B. John Pendleton, Jr.  
B. John Pendleton, Jr.  
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Attorneys for Defendant

Dated: August 30, 2016